ALTERNATE DRAFT for Commissioner Wood

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item 35a ID #2890
(Alternate to Item ID #2610)

ENERGY DIVISION **RESOLUTION E-3843**
November 13, 2003

R E S O L U T I O N

Resolution E-3843. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) filed tariff changes to implement the rules governing the rights and obligations of Direct Access (DA) customers to switch between bundled and DA service, as adopted in D.03-05-034, the "Switching Order." Approved with modifications.

By PG&E Advice Letter (AL) 2393-E, SCE AL 1717-E, and SDG&E AL 1508-E filed on June 23, 2003.

SUMMARY

This Resolution resolves implementation issues regarding the rules we adopted for eligible direct access (DA) customers to choose an ESP and continue on DA service if they had returned or been returned to bundled service after September 20, 2001.

BACKGROUND

By Decision (D.)02-03-055, we confirmed the DA suspension date of September 20, 2001 and adopted rules to implement that suspension. Among other things, we allowed DA customers who signed a direct access contract prior to September 20, 2001 to choose a new ESP and continue on direct access, subject to certain restrictions, even if they had returned to bundled service after September 20, 2001. This rule was termed the "switching exemption." The Utility Reform Network (TURN) filed an Application for Rehearing that argued the basis and lawfulness of the switching exemption. By Ordering Paragraph (OP) 4 of D.02-04-067, we granted a limited rehearing on the switching exemption to consider its legality in light of Assembly Bill 1X (2001) and D.01-09-060, and to develop an adequate record on this exemption.

Decision 02-11-022 in Rulemaking (R.) 02-01-011 adopted the DA cost responsibility surcharge (DA CRS) but deferred consideration of the switching exemption. On May 8, 2003, we issued D.03-05-034 (also referred to as the Switching Order) to adopt rules to implement the switching exemption, as well as to address its legality as granted in D.02-04-067. Finally, by D.03-06-035, we addressed applications for rehearing of D.03-05-034, filed by TURN, Edison and PG&E, and granted a limited rehearing on the issue of using the California Independent System Operator (ISO) hourly price as a proxy for the short-term commodity price of electricity. The applications for rehearing were otherwise denied in all other respects.

In the Switching Order, we directed the utilities to jointly develop advice letters within 45 days to file tariff changes and develop implementation timing and details necessary to comply with that order. Within 15 days of the filing of the advice letter, the utilities were required to notify "grandfathered" DA customers by letter that they have 45 days from the date of the letter during which to respond if they elect to return to DA. The original schedule set forth in the Switching Order required these rules to be fully implemented by August 21, 2003 (OP 8).

On June 6, 2003, the Commission's Energy Division hosted a Rule 22 Working Group meeting as directed in the Switching Order, to discuss and resolve implementation issues arising from the rules adopted in that order. At the workshop, the utilities proposed an extended schedule resulting in a final implementation date of November 3, 2003, (instead of August 21, 2003). This proposal contemplated mailing the 45-day notification letter on September 19, 2003 (i.e., 45 days before November 3, 2003). No party expressed opposition to this proposal, and on July 3, 2003, the Commission's Executive Director granted the extension request of the utilities.

As directed in the Switching Order, on June 23, 2003 PG&E filed AL 2393-E; SCE filed AL 1717-E, and SDG&E filed AL 1508-E. Parties at the Rule 22 Working Group meeting were unable to resolve all of the implementation issues and require Commission determination for final implementation.

NOTICE

Notice of PG&E AL 2393-E, SCE AL 1717-E, and SDG&E AL 1508-E was made by publication in the Commission's Daily Calendar. PG&E, SCE, and SDG&E state in their respective Als that in accordance with General Order 96-A, Section III, Paragraph G, this advice letter was sent to parties shown on the attached list and the service list for R. 02-01-011.

PROTESTS

Three parties timely protested PG&E's AL 2393-E, the Alliance for Retail Energy Markets and the Western Power Trading Forum (AReM/WPTF), Energy Management Services (EMS), and Calloway Golf. The same three parties timely protested SDG&E's AL 1508-E and SCE's AL 1717-E. In addition, Hitachi Global Systems Technologies (Hitachi) and SBC Services, Inc. (SBC) timely protested SCE's AL.

The utilities responded jointly to the protest of EMS on July 18, 2003 and to the protest of Callaway Golf on July 21, 2003. PG&E and SDG&E responded jointly to the protest of AReM/WPTF on July 21, 2003. SCE responded to the protests of SBC and Hitachi on July 17, 2003 and to the protest of AReM/WPTF on July 21, 2003.

The following is a more detailed summary of the major issues raised in the protests.

DISCUSSION

Parties at the June 6 Rule 22 Working Group Meeting raised a number of implementation issues, some of which they were able to resolve. Other issues required additional Commission guidance. In this section, we will address those issues. Parties at the workshop were able to resolve the following issues, some of which are not yet and need to be reflected in utility tariffs:

- After a DA customer gives the utility its 6-month notice to return to bundled service, the utility will allow the customer a 3-day rescission period. Based on SCE's comments on the draft Resolution (DR), SCE does not concur with this provision. SCE's proposed tariffs filed in its AL do not comply, since once the customer's

request is received, it cannot be cancelled. The utilities shall modify their tariffs as prescribed in the Comments Section.

- Before two and a half years elapses on a three-year term of bundled service, the utility will provide the bundled service customer with a notice before the customer faces the decision as whether to stay with bundled service or to sign up with an ESP for DA service. The utilities have proposed acceptable tariff language to implement this provision.

- For purposes of implementing the safe harbor rule, the utility will allow the ESP a 20-day window after the initial DASR is rejected for the DASR to be corrected. The utilities have reflected this provision in their proposed tariffs.

Sixty-Day Meter Change Deadline

AReM/WPTF protested PG&E's and SCE's proposed Rule 22.1, and SDG&E's proposed Rule 25.1 (§§ A.2.c and C.6.c in all cases), which provides that for accepted Direct Access Service Requests (DASRs) that require a meter change, the utility will cancel the DASR if the meter change is not completed within 60 days after the receipt of the DASR (or corrected DASR).

Among other things, SCE in its response, as well as PG&E and SDG&E in their joint response, point out that by definition, all the affected customers have been on DA and thus already have a DA compatible meter, so the 60-day time requirement is reasonable. Furthermore, all three utilities agree that if the ESP wishes to install a different meter, and cannot accomplish this within 60 days, the switch can be done after the customer returns to DA service. SDG&E and PG&E in their joint response also argue that adopting AReM/WPTF's proposal to apply the 180-day rule, would extend the safe harbor from the Switching Order's 60 days to as long as 260 days (i.e., 60 days to submit DASR; 20 days to correct DASR; 180 days to install meter) or more than four times the length of the intended transition period.

PG&E's rule requires that if the new ESP insists upon installing a new meter before the customer can switch back to direct access, the change must occur within 60 days after acceptance of the DASR. However, PG&E and SCE maintain that in most cases, if there are delays in switching the meter, the customer can be

put back on direct access with its existing meter, and the ESP can change the meter after the customer is back on DA service. We find this approach reasonable. The utilities' tariffs should reflect that alternative (for the customer to return to DA service with its existing meter wherever possible) so that the 60-day limit on the safe harbor period is preserved. The utilities shall not use the 60-day rule to cancel DASRs and prevent eligible customers from returning to DA service. If the ESP is unable to change the meter within 60 days, it may serve the customer using the existing meter until such time as the meter change can be accomplished. Therefore, PG&E, SCE, and SDG&E shall modify the provisions of proposed Rule 22.1 and 25.1 respectively, to provide for returns to DA service with existing meters wherever possible and to complete all necessary steps to allow the ESP to complete any necessary meter changes timely.

New ESP Restriction

AReM/WPTF in its protest to SCE's AL, argues that the restrictive provision of proposed Rule 22.1 (§ A.7) that prohibits DA customers that utilize the 60-day safe harbor from resuming DA service with their former ESP should be deleted. PG&E and SDG&E deleted this restrictive language at the request of parties at the June 6, 2003 Rule 22 Working Group meeting. SCE in its response argues that its restrictive tariff is necessary due to the potential for arbitrage and also because the transitional bundled service (TBS) rate might not be as high as the actual cost incurred by SCE to serve TBS customers as demonstrated by a few instances in the past. SCE recommends against allowing DA customers to switch to the same ESP, because this would allow ESPs to arbitrage their prices for power against the TBS price and return customers to SCE under the "safe harbor" provision when the TBS price is lower than their price. SCE argues that this situation is exactly what occurred during the energy crisis when Enron returned many of its DA customers to bundled service, without the customer's knowledge, to take advantage of lower bundled rates.

We disagree with AReM/WPTF that the provision proposed by SCE in its tariff are restrictive and would serve to limit the competitive options available to DA-eligible customers. SCE bases its proposal on a clear interpretation of D.03-05-034. In that decision, we raised concerns that DA customers not be "...able to use the 'safe harbor' as a means of gaming or arbitraging..." and

restricted the use of the "safe harbor" provision to "...facilitate an already contemplated switch to a new ESP.[1]" It was envisioned that the safe harbor would be used only after the DA customers was ready to begin the process to switch to a new ESP and not to "shop around." Given the limitations set forth in D.03-05-034, it is clear that a prohibition to switch to the same ESP is not the same as providing for flexibility for new offerings as market conditions change.

While the TBS pricing structure will help insure that bundled service customers will remain indifferent to those DA customers' temporarily returning to bundled service under TBS, we do not view the TBS structure as a guaranteed check for potential arbitrage. Rather D.03-05-034 is clear in its intent to prevent the use of the safe harbor provision except for already contemplated switches. We adopt SCE's tariff provision to limit the use of the safe harbor provision only to facilitate a switch to a new ESP and require the other utilities to make necessary revisions to their tariffs to reflect this approach.

Continuous DA Status for Safe Harbor and Other Customers

Parties disagreed as to whether the safe harbor requirements adopted in the Switching Order regarding continuous DA status apply retroactively for those taking bundled service after September 20, 2001. A continuous DA customer, as provided in D.02-11-022, that remained on DA both before and after February 1, 2001, shall be excluded from the DWR power and bond charges. The controversy is whether customers that returned to bundled service after DA suspension can retain their CRS exemption. SBC in its protest and at the June 6 Rule 22 Working Group meeting argued that its comments on the proposed decisions on the switching exemption were adopted in the Switching Order.

The dispute involves interpretation of language in the Switching Order (at mimeo p. 19) "We also clarify that if a customer was exempt from DWR charges as a "continuous" DA customer (i.e., taking DA prior to February 1, 2001), that customer does not lose the exemption upon returning to DA service after utilizing the "safe harbor" provisions. We also clarify that for switches to utility bundled service for transitional purposes prior to the effective date of this order, the safe harbor period shall be 60 days from the time the DA status of the

1. [1] D.03-05-034 at p.19

account was deactivated until a new DASR is submitted. We conclude that such accommodation is appropriate for switches that occurred prior to this order since parties were not on notice as to the 60-day limit adopted in this order."

AReM/WPTF, SBC, and Hitachi protested the unique position SCE took in its AL that the safe harbor does not apply retroactively more than 60 days prior to the effective date of D.03-05-034 (i.e., March 8, 2003). These parties insist that the safe harbor period has retroactive application to September 21, 2001, and SCE has no basis to contend otherwise. Moreover, the Switching Order contains no mention of SCE's proposed March 8th trigger date for the safe harbor period. SBC notes that the proposed tariffs concurrently filed by PG&E and SDG&E offer appropriate models for SCE to follow. SCE in its responses insists that its interpretation meets the requirements in the Switching Order and objects to the idea that Hitachi finds it clear throughout that Order that the 60-day period runs once the DA status of the account is deactivated, regardless of when the account was deactivated. Citing retroactive ratemaking, SCE argues the impossibility of these parties' position on the basis of not being able to compute TBS pricing retroactively. SCE states that no transitional returns to bundled service (TBS) pricing, or any associated incremental cost pricing for TBS, could occur prior to D.03-05-034. In fact, SCE asserts that there will be no TBS until November 3, 2003, at the earliest. (See letter from William Ahern, Executive Director of the Commission, dated July 3, 2003, granting the July 1, 2003 request by PG&E, SDG&E, and SCE for an extension of time to implement the switching exemption rules). SCE also discounts SBC's position that the Commission modified the proposed decision in accordance with SBC's comments, pointing out that the final decision did not include SBC's January 1, 2002 date, let alone the September 20, 2001 date.

SCE in its responses also argues that as more DA customers are reclassified as "continuous" DA customers, there will be less "non-continuous" DA customers to pay back the DA CRS undercollections. With fewer DA customers over which to spread the CRS costs, the cost per DA customer rises, as does the likelihood of default by those customers and an increased risk that bundled service customers will never be repaid the amounts postponed under the 2.7 cents cap. Furthermore, SCE argues that additional DA customers being reclassified as "continuous" DA customers could require additional calculations that might delay DWR's revenue requirement proceeding.

In D.02-11-022 we defined continuous DA customers as those that took DA prior to January 17, 2001 and remained on throughout 2001[2] and found it reasonable to exempt those customers from paying either the DWR bond charge or the DWR power charge. However, in the same decision we further directed that all DA customers that took bundled service on or after February 1, 2001 must be subject to DWR bond and power charges on a consistent basis. Accordingly, the relevant date for assessing individual customer responsibility for paying the DA CRS elements relating to DWR charges is based upon the status of the customer's load as of February 1, 2001. The relevant criterion for this assessment is whether the customer's load was subject to bundled utility service on or after February 1, 2001. Further, in D.02-11-022, we considered the arguments of various parties to "vintage" the DA CRS by prorating the percentage of time that individual customers took bundled service. We also considered arguments that DA customers on bundled service only for a short time period should be exempt from the DWR charges. For reasons set forth in D.02-11-022, we rejected those arguments, and applied a uniform DA CRS both for DWR bond and power charges irrespective of the specific fraction of time individual customers took bundled service.

In D.03-05-036, issued on the same day as the Switching Order, we addressed the request for clarification by SDG&E on the treatment of the Navy load. In that decision, we found that the Navy, as an individual customer, is not entitled to a unique exemption from payment of uniform DA CRS requirements (based on the relevant measurement date of February 1, 2001) because "as determined in D.02-11-022, all customers that took bundled service on or after February 1, 2001, must bear their fair share of DWR costs, pursuant to AB 117. Under this adopted treatment, the Navy remains responsible for paying the appropriate DWR bond and power charges on the same basis as other customers, consistent with AB 117."

Therefore, consistent with our adopted approach in D.02-11-022, and as directed in Ordering Paragraph 3 of the Switching Order that "customers returning to DA service during the 45-day window period, will resume responsibility for payment of DA CRS on the same basis as applicable to other existing DA customers pursuant to Decision 02-11-022," we deny the protests of

2. [2] D.02-11-022, at pp. 39-40

AReM/WPTF, Hitachi and SBC and direct PG&E, SCE, and SDG&E to modify their tariffs to reflect that continuous customers are those that have taken DA service before and after February 1, 2001. Any DA customer that took bundled service after February 1, 2001, loses its continuous status.

A similar issue is whether a continuous DA customer that elects a 3-year term on bundled service retains its continuous DA status when it returns to DA at the end of those three years. In protests to the utilities' ALs, AReM/WPTF argues that no justification exists for requiring continuous DA customers that commit to receive bundled service for a 3-year period to pay DWR charges if they resume DA service at the end of their 3-year commitment period. These parties argue that nothing in D.03-05-034 suggests that such customers should lose their exemptions from paying DWR charges if they resume DA service. They add that to the extent the customer utilizes power procured under DWR contracts while on bundled service, the customer will pay the full costs of that power through bundled service rates.

Callaway Golf also argues that a customer should never lose its status as a "continuous" DA customer, regardless of the length of the customer's stay on bundled service. Callaway Golf reasons that in D.03-05-034 (p. 40), we held DA customers that return to bundled service remain liable for their respective share of the DA CRS undercollections resulting from the period they took DA service. Since that decision held customers responsible for DWR charges regardless of any switching that may occur between DA and bundled service, the reverse should also be true – that continuous DA customers not responsible for DWR charges should not acquire a new obligation to bear DWR charges upon a return to DA.

Callaway Golf also notes that in D.03-05-034 (p.30), we expressed concern regarding "cost-shifting" when customers switch between bundled and DA service. According to Callaway Golf, there is no shifting of DWR costs, however, when a continuous direct access customer returns to DA service, because the customer never previously bore DWR costs.

SCE in its response and PG&E and SDG&E in their joint response reiterate the determination made in D.02-11-022 that any DA customer returning to bundled service after February 1, 2001 shall be responsible for DA CRS charges and lose its continuous DA status (D.02-11-022, OP 13). The only exception granted in the Switching Order was for safe harbor customers (p. 16). PG&E and SDG&E argue

that the continuous DA customer should not be able to take advantage of the DWR portfolio (by returning to a 3-year term on bundled service) without losing its continuous direct access status.

Again, we note that D.02-11-022 is clear that a continuous DA customer is one that took DA service at all times before and after February 1, 2001. To be clear, continuous direct access status is not a birthright that remains with the customer for the life of the customer. Rather, it is a construct of this commission solely for the purpose of identifying and assigning DWR bond and power charge cost responsibilities pursuant to AB117. To grant continuous direct access status to a customer that opted to take bundled service for 3 years pursuant to our Switching Order would run counter to our earlier positions in D.02-11-022. No party would suggest that a direct access customer that physically leaves the state for whatever reason and returns 3 years later regain its continuous direct access status. Granting the request by Callaway Golf would essentially do just that. Therefore, we do not adopt the provision proposed by Callaway Golf. We direct PG&E, SCE, and SDG&E to include language in their Rules 22.1 and 25.1 providing that DA customers that receive bundled procurement service for a 3-year period shall not retain their continuous DA status if they resume DA service at the end of their 3-year commitment.

Applicability of SCE's Historical Procurement Charge

AReM/WPTF protests that SCE should modify its proposed Rule 22.1 to provide that customers who are eligible to receive DA service but who have heretofore remained on bundled service shall not be responsible for paying the Historical Procurement Charge (HPC) if they elect to exercise their DA rights under the Switching Exemption Rules, provided that SCE has fully recovered its PROACT balance by the time the customers start receiving DA service. This exception is necessary to prevent the double-recovery of amounts recorded in the PROACT from such customers, once through bundled rates that the customers have paid and continue to pay and a second time through the HPC should they elect direct access after PROACT is recovered.

SCE in its response states that during the Rule 22 Working Group meeting held on June 6, 2003, its representatives stated that customers who are eligible to receive DA service, but who have remained on bundled service and have paid their share of Procurement Related Obligations Account (PROACT) balance will not be charged the HPC if they switch to DA service during the 45-day transition

period. SCE, however, did not state that it would include this statement in its Rule 22.1. However in its response, SCE again confirms that it will not charge the HPC to the DA customers described above.

Since the PROACT is fully paid off, and SCE proposed no mechanism for weighting customer responsibility during brief periods of bundled service, any bundled customer returning to DA after the 45-day customer notice that the utilities will provide to eligible DA customers, will be exempt from the HPC. SCE shall modify its tariffs to reflect this exemption.

Responsibility of Former DA Customers for CRS Undercollections When Returning to Bundled Procurement Service

As a result of the capping of the DA CRS implemented in D.02-11-022 and subsequent orders, DA customers have generated and will continue to generate significant undercollections of DWR-related costs. Therefore, we required that DA customers returning to bundled service remain liable for their respective share of DA CRS undercollections resulting from the period they took DA service. The returning DA customer shall thus remain responsible for the difference between the total DA CRS obligation at the date of the customer's switch to bundled service and the total amount paid pursuant to any DA CRS caps. The Rule 22 Working Group meeting, later replaced by the Utility Advice Letter process, was to address the issue of developing a tariff-based solution to provide for returning DA customers' repayment of an appropriate share of the accrued undercollection. This resolution will thus address the issue of the process for returning DA customers' repayment of prior obligations as directed in the Switching Order (p. 44-45, Finding 17).

PG&E proposes a tariff-based solution for applicable customers to repay an appropriate share of the accrued DA CRS undercollection. Customers who received DA service after September 20, 2001, and who were not otherwise exempt from paying the DA CRS, will be required to pay for the DA CRS undercollections for the period during which they took DA service.

DA customers who contributed to the DA CRS undercollection should be required to begin paying the DA CRS undercollection when the then-current DA CRS revenue requirement is less than the DA CRS revenue, which could occur months or years after implementation of the switching rules. At that time, PG&E

anticipates that the CRS will include a "shortfall rate" for DA CRS undercollection. Customers who received only DA service after September 20, 2001, are obligated to pay this shortfall rate in full. Customers who did not receive DA service for the entire period after September 20, 2001, shall pay a percentage of the shortfall rate. The percentage that applies to each customer will be determined by the periods they took DA service since September 20, 2001, and the periods of bundled service during which the DA CRS was paid. The percentage will be multiplied by the applicable shortfall rate and by the customer's current sales to determine the amount of repayment each month. SCE proposes a new charge, named the DA-CRS-UC for recovery of under-collections related to the DA-CRS cap. SCE's Schedule DA-CRS (renamed and modified Schedule DA) establishes the provisions for application of this charge to both DA customers as well as bundled service customers formerly served on DA. SDG&E is revising Schedule DA-CRS to establish the provisions for applying the undercollection to both DA customers as well as bundled service customers who were formerly served on DA after September 20, 2001. Neither SCE nor SDG&E describe any weighting of this new charge, as does PG&E.

PG&E's proposal is equitable in assigning costs to appropriate customers. We will approve PG&E's method for use in all three service territories. SCE and SDG&E shall modify their tariffs accordingly.

TBS Pricing

EMS protested the commodity charge calculation for TBS. The utilities responded jointly, citing discussion in the Switching Order about the undue complexity and impracticality of requiring each utility to calculate actual short-term commodity costs on an hour-by-hour basis incurred to serve" TBS customers (at mimeo p. 20). We note that TURN, SCE, and PG&E filed applications for rehearing of D.03-05-034, and we granted a limited rehearing in D.03-06-035 on the issue of using the ISO hourly price as a proxy for the short-term commodity price of electricity. Resolution of the issues raised by EMS will be in the forum established in the rehearing process.

COMMENTS

Public Utilities Code section 311(g)(1) provides that draft resolutions must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day

period may be reduced or waived upon the stipulation of all parties in the proceeding. The 30-day comment period for the Energy Division Draft of this resolution was neither waived nor reduced. Accordingly, the draft Energy Division resolution was mailed to parties for comments on August 19, 2003. Comments were submitted timely on September 3, 2003 by PG&E, SCE, SDG&E, the California Manufacturers & Technology Association (CMTA), AReM/WPTF, and the Building Owners and Managers Association (BOMA). Reply comments were submitted timely on September 8, 2003 by Callaway Golf and jointly by PG&E, SCE, and SDG&E (the utilities).

On October 20, 2003, a draft alternate resolution was distributed for comment pursuant to PU Code Sections 311(e) and 311(g) and Rule 77.7 of the Commission's Rules of Practice and Procedures. The draft alternate differs from the draft Energy Division resolution that was distributed for comment on August 19, 2003, with regard to the provisions limiting the use of the safe harbor only for switches to different ESPs and its treatment of continuous direct access status for grandfathered customers and DA customers opting for bundled service for 3 years. Accordingly, parties are instructed not to repeat the comments they submitted previously on other topics unless additional information has arisen and/or the parties' stated position has been modified. Previously filed comments would be considered and reflected into the draft alternate resolution. Comments on the draft alternate resolution were filed on _____ by _____. Reply comments were filed on _____ by _____.

FINDINGS

1. In D.03-05-034, the "Switching Order," we directed PG&E, SCE, and SDG&E to file Advice Letters to implement the rules we adopted to govern the rights and obligations that apply when DA customers return to bundled service and subsequently switch back to DA service.

2. Parties at the June 6, 2003 Rule 22 Working Group meeting resolved certain issues as explained in the discussion section herein.

3. On June 23, 2003, PG&E filed AL 2393-E, SCE filed AL 1717-E, and SDG&E filed AL 1508-E, proposing tariffs to implement the DA switching exemption rules.

4. AReM/WPTF, EMS, and Callaway Golf timely protested PG&E's AL 2393-E, SCE's AL 1717-E, and SDG&E's 1508-E.

5. SBC and Hitachi timely protested SCE's AL 1717-E.

6. We authorized the 45-day period in Ordering Paragraph 2 of the Switching Order to allow "grandfathered" DA customers (i.e., those that have switched to bundled service since September 20, 2001) a fair opportunity to research their opportunities and decide whether to remain on bundled service or to return to DA service.

7. Due to the unique circumstances, each customer that elects DA any time during the 45-day window period will be allowed a 60-day safe harbor beginning on the day after the 45-day period ends. ESPs thus have 60 days thereafter to submit DASRs and receive acknowledgement of receipt from the utilities, consistent with the safe harbor provisions of D.03-05-034.

8. Since the utilities have already had to adjust their supplies to accommodate customers returned to bundled service after September 20, 2001, allowing these customers to remain on bundled rates is reasonable during this unique 45-day and subsequent safe harbor period.

9. For most cases in which a customer's meter change is delayed, the customer can be put back on direct access with its existing meter, and the ESP can change the meter after the customer is back on DA service. Thus meter changes should neither extend the customer's stay in the safe harbor nor result in cancellation of the DASR by the utility.

10. At the request of parties at the June 6, 2003, Rule 22 Working Group meeting, PG&E and SDG&E deleted a prohibition on safe harbor customers' returning to DA service with their former ESP.

11. Numerous and repeated returns of DA customers to bundled service for purposes of arbitrage will serve as cause to revisit the safe harbor rules.

12. The Switching Order contains no mention of SCE's proposed March 8th trigger date for the retroactive safe harbor period.

13. In D.03-05-034, we held DA customers that return to bundled service responsible for their respective share of DA CRS undercollections resulting from the period they took DA service.

14. Since SCE has fully recovered its PROACT balance, an HPC exception is warranted for DA eligible customers that have been on bundled service and elect to return to DA service during the 45-day notice period.

15. PG&E's proposed tariff-based solution for DA customers' returning to bundled service to repay an appropriate share of the accrued DA CRS undercollection is equitable in assigning costs to appropriate customers.

16. The TBS price issues raised in protests and comments will be addressed in the rehearing granted in D.03-06-035 and not in this forum.

THEREFORE IT IS ORDERED THAT:

1. The DA Switching Rules proposed by PG&E in Advice Letter AL 2393-E, SCE in AL 1717-E, and SDG&E in AL 1508-E are approved as modified herein.

2. Within 30 days of the effective date of this resolution, PG&E, SCE, and SDG&E shall issue letters to bundled service customers that had DA service as of September 21, 2001, notifying these customers of their eligibility to return to DA service. The letter shall explain that the customer needs to decide, within 45 days, based on research of the available service offerings, whether to return to DA service. The letter shall stress the time constraints involved if the customer elects to return to DA service, requiring the customer to act promptly to sign up for service with the Electric Service Provider. To prompt appropriate customer action, the utilities shall provide customers with a second notice near the end of the 45-day window, reminding customers that immediate action is necessary if they plan to resume DA service. By the end of the subsequent 60-day safe harbor period, ESPs must submit DASRs and receive acknowledgement of receipt from the utilities.

3. After a DA customer gives the utility its 6-month notice to return to bundled service, the utilities will allow the customer a 3-day rescission period before the notice becomes binding.

4. Before two and a half years elapses on a three-year term of bundled service, the utility will provide the bundled service customer with a notice before the customer faces the decision as whether to stay with bundled service or to sign up with an ESP for DA service.

5. For purposes of implementing the safe harbor rule, the utility shall allow the ESP a 20-day window after the initial DASR is rejected for the DASR to be corrected.

6. PG&E, SCE, and SDG&E shall provide for returns to DA service with existing meters wherever possible and to complete all necessary steps to allow the ESP to complete any necessary meter changes timely.

7. PG&E, SCE, and SDG&E shall prohibit a safe harbor customer to return to the same ESP.

8. PG&E, SCE, and SDG&E shall modify § A.6 of their Proposed Rules 22.1 and 25.1, respectively to reflect that DA customers that took bundled service after February 1, 2001, shall not be allowed to return to DA service as a continuous DA customer.

9. PG&E, SCE, and SDG&E shall include language in their Rules 22.1 and 25.1 prohibiting a DA customer that commits to receive bundled procurement service for a 3-year period from returning to DA status as a continuous DA customer if they resume DA service at the end of their 3-year commitment.

10. Since the PROACT is fully paid off, any bundled customer returning to DA after the 45-day customer notice that the utilities will provide to eligible DA customers, will be exempt from the HPC, and SCE shall modify its tariffs to reflect this exemption.

11. PG&E, SCE, and SDG&E shall make the tariff changes necessary to implement the tariff-based solution as proposed by PG&E for applicable former DA customers to repay an appropriate share of the accrued DA CRS undercollection. Customers who received DA service after September 20,

2001, and who were not otherwise exempt from paying the DA CRS, will be required to pay for the DA CRS undercollections for the period during which they took DA service.

12. Because the TBS price is the subject of rehearing granted in D.03-06-035, we deny EMS's protest without prejudice, pending the outcome of the limited rehearing granted in this matter.

13. The protests of AReM/WPTF, Callaway Golf, Hitachi, and SBC are denied.

14. Within 7 days of the effective date of this resolution, PG&E shall supplement AL 2393-E, SCE shall supplement AL 1717-E, and SDG&E shall supplement AL 1508-E to reflect the modifications to their proposed tariffs as specified and explicitly adopted in this Resolution. These supplemental advice letters shall be effective on the date granted for implementation of the DA switching exemption rules in response to the September 8, 2003 Rule 48 request of the utilities, subject to Energy Division's determining that they are in compliance with this Order.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 13, 2003; the following Commissioners voting favorably thereon:

_____
WILLIAM AHERN
Executive Director